

DECLASSIFIED

Authority *MD 96900*
By *MW* NARA Date *1/17/69*

DEPT. DISTRIBUTION				ORIGIN/ACTION				DEPARTMENT OF STATE				POL 33-8			
AIRGRAM				Original to be Filed in _____ Decentralized Files.				FILE DESIGNATION							
CONFIDENTIAL				NO. CA-406											
HANDLING INDICATOR				TO				ANKARA, ATHENS, BONN, BRUSSELS, COPENHAGEN, THE HAGUE, LISBON, LONDON, LUXEMBOURG, MADRID, OSLO, PARIS, REYKJAVIK , REYKJAVIK, ROME, TOKYO, US MISSION NATO							
INFO: CANBERRA, MOSCOW, OTTAWA, US MISSION UN (NEW YORK)				FROM : Department of State				DATE: JAN 23 10 25 AM '69							
SUBJECT : Law of the Sea Talks with the Soviet Union				REF : CA-9870											
1. On December 16, 17 and 18, the U.S. and the Soviet Union held a second round of expert level talks concerning the possibility of a new Law of the Sea Conference; this second round was held in response to Soviet initiative coupled with a suggestion that they would unilaterally proceed with a worldwide convass if we did not agree to a second round. The first round in July was reported in CA-9870. Attached are three draft articles produced by these talks. At this second round the Soviets informed us of their agreement to Articles I and II, agreed <u>ad referendum</u> in July, and that they agreed with us that a provision recognizing some special fisheries rights for coastal states beyond 12 miles would be important in securing the adherence of enough countries around the world to make possible a meaningful treaty establishing the 12-mile limit and clear rights of passage through and over international straits. At the December talks agreement was reached, <u>ad referendum</u> , on a fisheries article which recognizes limited, carefully defined preferential rights for a coastal state beyond the 12-mile territorial sea or fishery zone. We expect to learn the Soviet Government's reaction to Article III in the near future. If the Soviets wish to raise questions with us about Article III, they will ask the U.S. for a third round of consultations, probably to occur in Moscow at an early date.															
CONFIDENTIAL				For Department Use Only											
Drafted by: L:L/SPA:JGCarter:edk				Drafting Date: 1/17/69				Phone No.: 5568				Contents and Classification Approved by: L - Leonard C. Meeker LCM			
Clearances: EUR - Mr. Springsteen Interior - Mr. Terry				S/FW - Mr. McKernan DOD - Adm. McDevitt Mr. Ratiner				EA/J - Mr. Finn							

SUGGESTED DISTRIBUTION

ARA
1 copy
2-24-68
HS-Ed

POST ROUTING

TO:	Action	Info.	Initials
AMB/PO			
DCM			
POL			
ECON			
CONS			
ADM			
AID			
USIS			
FILE			

Action Taken:

Date:

Initials:

FORM 10-64 DS-323

CONFIDENTIAL

For Department Use Only

☐ In ☒ Out

DECLASSIFIED

Authority

By

NARA Date

~~CONFIDENTIAL~~

The following are clarifying points concerning Article III:

a. Paragraph A provides that before a coastal state can unilaterally apply the measures provided for in paragraphs B, C, and D, it must first try (for six months) to negotiate them with other interested states.

b. Paragraph B is a conservation provision which restates Article 7 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas.

c. Paragraph C provides that a coastal state may adopt measures to reserve to itself a part of the allowable catch of a particular stock of fish if it has undertaken substantial investment for the reproduction of this stock (e.g. through the establishment of hatcheries).

d. Paragraph D provides that a coastal state may reserve to itself a part of the allowable catch of a particular stock of fish where harvest of that stock has substantial importance to the economy of a coastal state or a region thereof. The measures adopted by the coastal state to this end will be effective only in the zone of activity of coastal fishing vessels, based exclusively in ports of the coastal state, of such a size and character that they cannot be relocated to other areas of the high seas (i.e. they cannot engage in distant water fishing). The only exception to this limitation on the zone of application of such measures is that the coastal state may enforce catch limitations beyond this zone if this is necessary to assure that the coastal state fishing vessels can continue to catch the reserved portion of the stock of fish within the zone of activity referred to earlier. These catch limitations can be effective only in an area which is "in the vicinity of and adjacent to" the coastal state 12-mile limit.

e. All coastal state measures adopted pursuant to paragraphs B, C, and D must satisfy the specific criteria referred to in the numbered subparagraphs of these respective paragraphs in order to be effective against

~~CONFIDENTIAL~~

DECLASSIFIED
 Authority *MM/9/6/00*
 By *MW* NARA Date *9/17/00*

CONFIDENTIAL

- 3 -

third states. If there is a dispute as to whether these criteria are met, it is to be resolved pursuant to paragraph F, referred to below.

f. Paragraph E makes it clear that beyond the 12-mile limit established by Article I, all states may fish, on an equal basis, for all stocks of fish, or other living marine resources, which are not subject to coastal state regulations under paragraphs B, C, or D and may also fish for that portion of a regulated stock of fish which is not reserved to the coastal state under paragraphs C or D.

g. Article III also contains a settlement of disputes provision (paragraph F) which is cast in two alternative forms: One provides for a binding decision; the other provides for findings of fact and recommendations which are advisory in character. If the latter form is adopted and the parties refuse to accept the Commission's findings and recommendations, the Article is silent regarding the continued effectiveness of unilaterally adopted coastal state measures. We told the Soviets we could accept either approach. They said Moscow had not made up its mind which it preferred, but would reach a decision on this issue soon.

3. FYI. Paragraph D of Article III is likely to be paragraph which causes greatest concern to countries with distant water fishing interests. When explaining this article embassies should emphasize the limitations placed upon coastal state rights recognized in this paragraph. The most important limitations from point of view of distant water fishing state are:

a. That measures taken by the coastal state may "not prevent other states from fishing for that part, if any, of the allowable catch (of the stock subject to the coastal state's measures) traditionally taken by them"; (paragraph D.3) (any distant water state can compete for the total catch of all such states) and

b. That the part of the allowable catch reserved by the coastal state's measures cannot be "more than can be justified" by the economic

CONFIDENTIAL



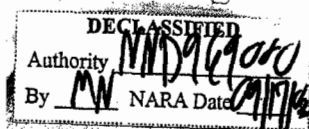
- 4 -

interest upon which the measures are based (paragraph D.2) -- i.e. the coastal state cannot reserve a greater portion of "a particular stock of fish" than that portion whose harvest has "substantial importance for the economy" of the coastal state or a region of the coastal state. It should also be pointed out that under paragraph D.3.1 the coastal state has the burden of establishing that its measures are "based on appropriate scientific findings." END FYI

4. CA-9870 requested U.S. Mission NATO to brief all members of NAC concerning Articles I and II. Because of the Soviet invasion of Czechoslovakia this briefing was not given. Detailed discussions have not been held in any NATO capitals; nor were they held with the Japanese either in Washington or Tokyo prior to December meeting. The British, Canadians, and Australians have been informed in Washington of the most recent Soviet talks and have been given copies of Articles I, II, and III. Our records reveal that in addition to these three only Reykjavik was advised of the first two articles. Further discussions with the U.K., Australia and Canada are being arranged with embassies in Washington. We held discussions January 15 with Sir Kenneth Bailey of Australia, at their request; they will respond further shortly. Detailed talks were held at the Department with Mr. Elliot of British Embassy and Henry Darwin of U.K.U.N. January 16. These talks will be reported in a separate memo of conversation. Canadian Embassy has informed us they will have detailed comments shortly.

5. Articles I and II are highly satisfactory to the U.S. Government. Article III was negotiated ad referendum. We desire to press ahead as soon as possible to determine the general acceptability of this package as the basis for a successful conference held to adopt these articles. We would hope such a conference could be held not later than early 1970. To this end we may wish to secure action by the General Assembly

~~CONFIDENTIAL~~



CA-406

~~CONFIDENTIAL~~

- 5 -

at its 24th session next year; this would require submission of an agenda item not later than July 1969.

6. Before conveying our acceptance of Article III to the Soviets, however, and before proceeding with a general canvass on the basis of Articles I, II, and III, we desire to consult with the host governments of action addressees of this airgram to determine whether they would find this package an acceptable basis for a conference. FYI Several of our Allies will view this matter (particularly Article III) as extremely important. We want to ensure that we clearly understand the significance of the Articles to our Allies, and we wish to take their views into account in reaching decisions on proceeding with a Law of the Sea Conference. We do not wish to give them the impression that Article III, or other Articles for that matter, are faits accomplis. On the other hand, we do wish to convey our impression that the current draft Articles hold promise for agreement in this important area and that this promise might be jeopardized by a fisheries article more protective of distant water fishing interests. In striking this delicate balance, addressees may find the history of the talks in CA-9870 helpful. END FYI.

7. Action addressees, at an appropriately high level, should give copies of Articles I, II, and III to appropriate, high level, host government foreign office officials; brief them on the basis of materials herein and in CA-9870; and request their early comments on these articles and a projected law of the sea conference to be held for the purpose of adopting them. We will supply additional information, as requested and as necessary, prior to these consultations. Detailed questions, or other questions not answered by these materials, should be referred to Washington for answer. As appropriate, in the discretion of embassies, foreign officials can be invited to come to Washington to discuss this matter. It would be desirable to have responses in Washington as soon as possible, and no later than the end of February .

~~CONFIDENTIAL~~

DECLASSIFIED	
Authority	MD96900
By	NARA Date 9/17/97

CA-406

~~CONFIDENTIAL~~

- 6 -

FOR USNATO - You should advise NAC of approaches being made in capitals per paragraph 7 and take opportunity give NATO Dels draft Articles I, II and III and to provide them now with background on historical development of draft Articles as set forth above and in CA-9870. You should advise NAC that December 1968 round of expert-level talks with Soviets had originally been scheduled for September, but was cancelled by US after Warsaw Pact invasion of Czechoslovakia. The talks were resumed in December at Soviet initiative and produced tentative agreement on draft Articles I and II as well as ad referendum agreement on Article III as cited above. You should point out that Articles I and II are of security interest to Alliance and that we are discussing them bilaterally in context approach made in NATO capitals concerning all three articles. You should explain that the three articles must be discussed as a package and that fisheries matter more suitable for discussion by appropriate experts in capitals. FYI We desire to avoid discussion of different parts of the package in different forums because too many time consuming, and possibly confusing, lines of communication would thereby be established. END FYI

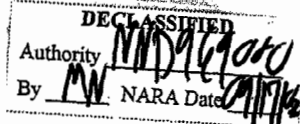
FOR TOKYO: We briefly discussed these articles with Japanese Embassy January 17. Copy of memo given them is enclosed for Embassy's background.

FOR LONDON: Department has already commenced discussions with British. Embassy should inform FONOFF we undertaking to brief NAC and hold consultations at addressee capitals.

ROGERS

Enclosure:
As indicated

~~CONFIDENTIAL~~



123/69 1

8

CONVENTION ON THE BREADTH OF
THE TERRITORIAL SEA

Article I

A) Each state shall have the right, subject to the provisions of Article II, to establish the breadth of its territorial sea within limits of no more than 12 nautical miles, measured in accordance with the provisions of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone.

B) In instances where the breadth of the territorial sea of a state is less than 12 nautical miles, such state may establish a fisheries zone contiguous to its territorial sea provided, however, that the total breadth of the territorial sea and fisheries zone shall not exceed 12 nautical miles. Such state may exercise within such a zone the same rights in respect to fisheries as it has in its territorial sea.

DECLASSIFIED
Authority MDA 9000
By MW NARA Date 7/17/05

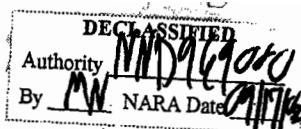


Article II

A) In order to safeguard more fully freedom of passage through straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state, the territorial sea in such straits shall be delimited in such a way as always to provide a corridor of high seas suitable for transit by all ships and aircraft. In the case of straits where particular channels of navigation are customarily employed by ships in transit, the high seas corridor, so far as ships are concerned, shall include such channels.

B) The provisions of this Article shall not affect the legal status of particular straits the passage through which is regulated by existing international agreements specifically relating to those straits.

~~CONFIDENTIAL~~
~~NO FORN DISSEM~~

~~CONFIDENTIAL~~

NEW YORK

December 20, 1963

ARTICLE III

A. All questions concerning fishery problems in any area of the high seas adjacent to the territorial sea or fishery zone of a coastal state should be resolved between that state and other interested states by means of negotiations, taking into account the interests of the coastal fishery and the distant water fishery. In the event that such negotiations do not lead to agreement within six months the coastal state may adopt measures as provided in paragraphs B, C and D below.

B. A coastal state may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation with respect to any stock of fish or other living marine resources in any area of the high seas adjacent to its territorial sea or fishery zone. These measures shall be valid with respect to all states only if the following requirements are fulfilled:

1. There is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

2. The measures adopted are based on appropriate scientific findings; and

~~CONFIDENTIAL~~



~~CONFIDENTIAL~~

- 2 -

3. Such measures do not discriminate in form or in fact against foreign fishermen.

C. In cases where a coastal state undertakes substantial investment for the reproduction of a stock of fish it may adopt measures to reserve to itself a part of the allowable catch of this stock. These measures shall be valid with respect to all states only if the following requirements are fulfilled:

1. The measures adopted are based on appropriate scientific findings;

2. The part of the allowable catch reserved is not more than can be justified by the investment referred to above;

3. Such measures do not prevent other states from fishing for that part, if any, of the allowable catch traditionally taken by them; and

4. Such measures do not discriminate in form or in fact between foreign fishermen.

D. In cases where the harvest of a particular stock of fish has substantial importance for the economy of a coastal state, or a region thereof, such state may adopt measures to reserve to itself a part of the allowable catch

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~

DECLASSIFIED	
Authority	NND 96900
By	NARA Date 01/17/00

~~CONFIDENTIAL~~

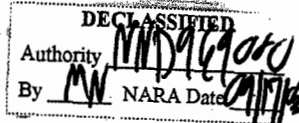
- 3 -

of this stock in the zone of activity of coastal fishing vessels of such a size and character that they cannot be relocated to other areas of the high seas and are based exclusively in ports along the coast of this state. These measures shall be valid with respect to all states only if the following requirements are fulfilled:

1. The measures adopted are based on appropriate scientific findings;
2. The part of the allowable catch reserved is not more than can be justified by the economic interest referred to above;
3. Such measures do not prevent other states from fishing for that part, if any, of the allowable catch traditionally taken by them; and
4. Such measures do not discriminate in form or in fact between foreign fishermen.

Subject to requirements (1) and (4) above, a coastal state may institute catch limitations in the vicinity of and adjacent to its territorial sea or fishery zone for a stock of fish having substantial importance for the economy of the

~~CONFIDENTIAL~~



~~CONFIDENTIAL~~

- 4 -

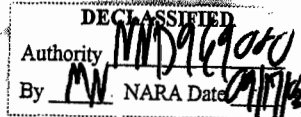
coastal state, or a region thereof, if such limitations are necessary to give effect to that state's rights under this paragraph.

E. All states may fish, on an equal basis, for that part of the allowable catch of the stock not reserved to the coastal state under paragraphs C and D above as well as for other stocks of living marine resources, taking due account of the necessity for maintaining the catches at a maximum sustainable level.

F. Any dispute which may arise between states under this article shall, at the request of any of the parties, be submitted to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations. The commission shall proceed in accord with the following provisions:

1. The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the states in dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any state

~~CONFIDENTIAL~~



~~CONFIDENTIAL~~

- 5 -

party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the states in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well-qualified persons being nationals of states not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

2. Any state party to proceedings under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.

3. The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~

DECLASSIFIED	
Authority	MM 96900
By	NARA Date 1/1/76

~~CONFIDENTIAL~~

- 6 -

to the dispute, failing agreement by the parties on this matter.

4. The special commission shall apply the criteria listed in paragraphs B, C and D, as relevant, to disputes arising under this article.

5. The special commission may decide that pending its award the measures in dispute shall not be applied.

6. The special commission shall render its decision, which shall be binding upon the parties, within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time limit for a period not exceeding three months.

[6. The special commission shall submit to the parties its findings of fact and recommendations regarding the validity of measures adopted pursuant to this article within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time for a period not exceeding three months.]

7. The special commission shall, in reaching its decisions [findings of fact and recommendations], adhere to

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~
~~CONFIDENTIAL~~

DECLASSIFIED	
Authority	MM96906
By	NARA Date 9/17/16

~~CONFIDENTIAL~~

- 7 -

these articles and to any special agreements between the disputing parties regarding settlement of the dispute.

8. Decisions of the commission shall be by majority vote.

~~CONFIDENTIAL~~